

P.E.R.C. NO. 2001-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-90

SALEM TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Salem City Board of Education for a restraint of binding arbitration over the increment withholding of a teaching staff member represented by the Salem Teachers Association. The Commission concludes that the Board's cited reasons and its supporting exhibits predominately relate to an evaluation of teaching performance which must be reviewed by the Commissioner of Education.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, John T. Barbour, P.A., attorney

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel; Gidian R. Mellk, on the
brief)

DECISION

On March 13, 2000, the Salem City Board of Education petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration over the increment withholding of a teaching staff member represented by the Salem Teachers Association.

The parties have filed briefs and exhibits. These facts appear.

The Association represents full-time classroom teachers and certain other teaching staff members. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1999 through June 30, 2002. The grievance procedure ends in binding arbitration.

Richard Kastrava is a tenured high school teacher. Near the end of the 1998-1999 school year, the Board voted to withhold his salary increment for the 1999-2000 school year. The Board gave these reasons for the withholding:

As per your request of May 1, 1999, the reason for your increment withholding is "unacceptable teacher performance." The specifications underlying that reason are as follows:

- a. Inefficiency related to the effectiveness of carrying out the Salem High School English Curriculum.
- b. Inability to maintain proper classroom decorum and student control.
- c. Failure to submit timely and relevant lesson plans.
- d. Failure to follow administrative directive regarding the sending out of students from the classroom.

On August 18, 1999, the Association demanded arbitration, alleging that the withholding was discipline without just cause. This petition ensued.^{1/}

The Board has provided 27 exhibits including annual evaluations, professional improvement plans, classroom observations, memoranda, and rebuttals. The Board has also submitted documents relating to tenure charges filed on April 26, 2000 and charging Kastrava with inefficiency as a tenured teaching staff member and unprofessional and unbecoming conduct as a

^{1/} No grievance documents were submitted so we assume the Association went directly to arbitration.

tenured teaching staff member. The Board accepted the charges and gave Kastrava 90 days to correct the inefficiencies.

The Association has submitted a copy of an e-mail from the Director of Curriculum to the principal of Kastrava's school. The message lists websites which the Director supplied to Kastrava to aid with lesson planning. In closing, the message stated: "There's more, but that's probably enough to bury him in paper for now."

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

Thus, we do not consider the contractual merits of this dispute or any contractual defenses the Board may have.

Under N.J.S.A. 34:13A-26 et seq., all increment withholdings of teaching staff members may be submitted to binding arbitration except those based predominately on the evaluation of teaching performance. Edison Tp. Bd. of Ed. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459 (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996).

Under N.J.S.A. 34:13A-27d, if the reason for a withholding is related predominately to the evaluation of teaching performance, any appeal shall be filed with the Commissioner of Education. If there is a dispute over whether the reason for a withholding is predominately disciplinary, as defined by N.J.S.A. 34:13A-22, or related predominately to the evaluation of teaching performance, we must make that determination. N.J.S.A. 34:13A-27a. Our power is limited to determining the appropriate forum for resolving a withholding dispute. We do not and cannot consider whether a withholding was with or without just cause.

In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991), we articulated our approach to determining the appropriate forum. We stated:


The fact that an increment withholding is disciplinary does not guarantee arbitral review. Nor does the fact that a teacher's action may affect students automatically preclude arbitral review. Most everything a teacher does has some effect, direct or indirect, on students. But according to the Sponsor's Statement and the Assembly Labor Committee's Statement to the amendments, only the "withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education." As in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd [NJPER Supp.2d 183 (¶161 App. Div. 1987)], we will review the facts of each case. We will then balance the competing factors and determine if the withholding predominately involves an evaluation of teaching performance. If not, then the disciplinary aspects of the withholding predominate and we will not restrain binding arbitration. [17 NJPER at 146]

There is no dispute that the Board's cited reasons and its supporting exhibits predominately relate to an evaluation of Kastrava's teaching performance. The Association contends that the e-mail message shows that the cited reasons are pretextual, but that contention must be considered by the Commissioner of Education. Greater Egg Harbor Reg. Bd. of Ed., P.E.R.C. No. 2000-85, 26 NJPER 214 (¶31088 2000); East Orange Bd. of Ed., P.E.R.C. No. 99-102, 25 NJPER 292 (¶30122 1999). We accordingly restrain arbitration.

ORDER

The request of the Salem City Board of Education for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: July 20, 2000
Trenton, New Jersey
ISSUED: July 21, 2000